

SETTLEMENT AGREEMENT BETWEEN
MISSOURI REAL ESTATE COMMISSION AND CASE PROPERTIES LLC
AND KELLY J. NELSON

Come now Case Properties LLC, dba Case Properties, ("Case Properties") and Kelly J. Nelson ("Nelson") (collectively "Licensees") and the Missouri Real Estate Commission ("Commission") and enter into this settlement agreement for the purpose of resolving the question of whether Case Properties' license as a real estate association and Nelson's license as a real estate broker associate will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensees' licenses, and, additionally, the right to a disciplinary hearing before the Commission under § 621.110, RSMo.

Licensees Case Properties and Nelson acknowledge that they understand the various rights and privileges afforded them by law, including the right to a hearing of the charges against them; the right to appear and be represented by legal counsel; the right to have all charges against them proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against them; the right to present evidence on their own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against them and, subsequently, the right to a disciplinary hearing before the Commission at which time they may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against their licenses. Being aware of these rights provided them by operation of law, Case Properties and Nelson knowingly and voluntarily waive each and every one of these rights and freely enter into this settlement agreement and agree to abide by the terms of this document, as they pertain to them.

Case Properties and Nelson acknowledge that they have received a copy of the documents relied upon by the Commission in determining there was cause to discipline their licenses, along with citations to law and/or regulations the Commission believes were violated.

For the purpose of settling this dispute, Case Properties and Nelson stipulate that the factual allegations contained in this settlement agreement are true and stipulate with the Commission that their licenses, numbered

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

2010006266 (Case Properties) and 2010006279 (Nelson) are subject to disciplinary action by the Commission in accordance with the provisions of Chapter 621 and §§ 339.010-339.205 and 339.710-339.855, RSMo.

Joint Stipulation of Fact and Conclusions of Law

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of Sections 339.010-339.205 and 339.710-339.855, RSMo.

2. Licensee, Case Properties, holds a real estate association license from the Commission, license number 2010006266. The Commission issued Case Properties' license on February 23, 2010 and it expires June 30, 2020. Licensee's license was current and active at all relevant times herein. Licensee Kelly J. Nelson is the designated broker for Case Properties.

3. Licensee, Kelly J. Nelson, holds a broker associate license from the Commission, license number 2010006279. The Commission issued this license on February 23, 2010. Nelson's broker associate license expires June 30, 2020. This license was current and active at all relevant times herein.

4. On July 25-28 and August 1-3, 8 and 10, 2016, the Commission conducted an audit of Licensee's real estate activity. The Commission's audit revealed the following violations:

- a. In violation of section 339.100.2(19), RSMo, there were improper business dealings on multiple instances. Licensee charged a fee that was not specifically spelled out on the owner statements. The fee was a 15% upcharge on vendor services to owners where the broker used her brokerage credit card to pay the vendor and then got reimbursed. According to Licensee, the upcharge was partially used to cover the credit card transaction fees.
- b. In violation of section 339.100.2(19), RSMo, there were inaccurate owner's statements on multiple instances for owner G due to expenses not being reflected, resulting in incorrect ending balances.
- c. In violation of section 339.105.1, RSMo, there were identified overages and shortages to the property management escrow account, account ending in 4921.
 - i. The identified overages totaled \$2,725.00 including \$450.00 due to a May 2015 leasing commission on 4102 California not being removed; \$750.00 for management fees not

removed; another \$1,100.00 due to management fees not removed; and \$425.00 due to funds received for properties not being managed.

- ii. The identified shortages totaled \$7,743.82 including \$122.04 due to bank fees debited from the account during the audit; \$1,500.00 due to a transfer to the broker's personal account; \$121.78 due to a transfer to the broker's personal account to reimburse invoices although the transfer exceeded the invoice amount; and \$6,000.00 due to two unexplained transfers to the operating account on November 16, 2015 and November 17, 2015.
- d. In violation of section 339.105.1, RSMo, there was a temporary shortage in the property management escrow account, Account 4921 of \$3,000.00 from February 16, 2016 to March 7, 2016 and \$4,000.00 from March 7, 2016 to April 25, 2016 due to unexplained transfer and redeposit.
- e. In violation of section 339.105.1, RSMo, there was an overdraft in the property management escrow account, Account 4921, on July 13, 2015.
- f. In violation of section 339.105.1, RSMo, there was commingling in the property management escrow account, Account 4921, on multiple instances. The commingling included: the broker refunded a security deposit to a tenant out of her operating account and transferred from escrow back to her operating account; a transfer for unknown purposes from the escrow to operating account, transferred out on February 16, 2016 and March 7, 2016 and redeposited on April 25, 2016; the transfer of \$1,500.00 to the broker's personal account from a construction account on April 6, 2016; an unexplained transfer of \$3,000.00 to the operating account on November 16, 2015; an unexplained transfer of \$3,000.00 to the operating account on November 17, 2015; the deposit of funds on a non-managed property into the property management escrow account; and transfer to the broker's personal operating account on non-managed properties.
- g. In violation of section 339.105.2, RSMo, and regulation 20 CSR 2250-8.220(7), the property management escrow account, Account 4921, was not registered with the Commission.

- h. In violation of section 339.105.3, RSMo, the broker did not maintain records necessary to determine the adequacy of the property management escrow account, Account 4921, on multiple instances. Commission examiners were unable to determine liabilities to the escrow account for owner G due to inaccurate owner statements and disbursements to the owner not matching what was disbursed according to the owner statement. According to Licensee, she was unable to verify if the revised owner statement reserve balances were correct. Other issues included an overdraft in the property management escrow account, commingling in the property management escrow account, unexplained transfers to the broker's operating account and broker line of credit, disbursements not containing the related transaction on two instances, voided checks not retained on four instances and the deposits did not contain the related transaction.
- i. In violation of section 339.730.1(1), RSMo, Licensee failed to perform the terms of the written agreement with the landlord. On numerous instances, the management agreement specified the broker provide the owner with monthly owner statements when they actually provided only annual statements. Licensee charged owner B on 3638 S. Compton a \$150.00 per month flat fee (in June 2016, Licensee reduced the fee to \$75.00) when the management agreement specified \$100.00 per month flat fee. Licensee stated that \$150.00 is correct and the management agreement would be amended. On four instances, Licensee charged owner G on 3720 Michigan a \$75.00 per month flat fee per occupied unit when the management agreement specified \$150.00 per month flat fee. On eleven instances, Licensee charged owner G on 2153 Stansbury a \$75.00 per month flat fee per occupied unit when the management agreement specified \$150.00 per month flat fee. Licensee did not remove a management fee for owner G on 2153 Stansbury on five instances.
- j. In violation of section 339.760.1, RSMo, Licensee's written policy did not describe the relationships in which the designated broker and affiliated licensees may engage with any seller, landlord, buyer or tenant in that the policy did not describe Seller's, Buyer's, Disclosed Dual, Designated Agent, Transaction Brokerage, Landlord's, Tenant's and Sub-agency.

- k. In violation of section 339.770.1, RSMo, and regulation 20 CSR 2250-8.097(1), Licensee failed to provide a landlord with a Broker Disclosure Form on multiple instances.
- l. In violation of section 339.780.2, RSMo, Licensee acted as an agent of the seller without obtaining a written agency agreement.
- m. In violation of section 339.780.2, RSMo, and regulation 20 CSR 2250-8.200(1), Licensee managed property without a current written management agreement on eight instances: 1241 Baden (owner Salco Investments LLC); 4964-4966 Eichelberger (owner Brzezinski); 4004-06 Keokuk (owner HLA Investments LLC); 4027 Oregon (owner Equity Trust); 10341 Galloway Drive (owner Dolophint Holdings LLC for which Licensee obtained a signed management agreement on July 28, 2016); 1526 Menard (owner L); 1147 Ruela Chelle Walk; and 4741 Milentz (owner S).
- n. In violation of regulations 20 CSR 2250-4.030(1) and 8.010(2), Licensee's business sign did not bear the name under which the brokerage was licensed and the fictitious name, Investors Alliance, was not registered with the Secretary of State's Office.
- o. In violation of regulation 20 CSR 2250-8.090(4)(A)1, a listing agreement did not include the price.
- p. In violation of regulation 20 CSR 2250-8.090(4)(A)3, a listing agreement did not include a definite beginning date.
- q. In violation of regulation 20 CSR 2250-8.090(4)(A)4, a listing agreement did not include an expiration date.
- r. In violation of regulation 20 CSR 2250-8.090(4)(A)8, a listing agreement did not include a statement which permits or prohibits the licensee from acting as a transaction broker.
- s. In violation of regulation 20 CSR 2250-8.096(1), Licensee's brokerage relationship was not disclosed in writing on eleven instances.
- t. In violation of regulation 20 CSR 2250-8.096(1), on 26 instances, Licensee made inaccurate disclosures in that Licensee disclosed as a Disclosed Dual Agent when actually only representing the landlord.

- u. In violation of regulation 20 CSR 2250-8.096(1)(A)5, the written brokerage relationship disclosure was not signed and dated by the landlord.
- v. In violation of regulation 20 CSR 2250-8.096(1)(A)6, the written brokerage relationship disclosure was not signed and dated by the disclosing licensee.
- w. In violation of regulation 20 CSR 2250-8.096(1)(A)6, the written brokerage relationship disclosure was not signed and dated by the disclosing licensee on or before the lease date.
- x. In violation of regulation 20 CSR 2250-8.100(1), earnest money was not held where specified in the contract.
- y. In violation of regulation 20 CSR 2250-8.150(2), Licensee failed to verify the accuracy of the closing statement in that payees were not identified.
- z. In violation of regulation 20 CSR 2250-8.150(3) and 8.160(1), Licensee failed to retain a copy of the buyer's and seller's closing statements.
- aa. In violation of regulation 20 CSR 2250-8.160(2), on four instances, the brokerage failed to retain records in that the brokerage failed to retain voided checks.
- bb. In violation of regulation 20 CSR 2250-8.220(6), management fees were not removed monthly on ten instances. A leasing commission earned in May was not removed as of June 30, 2016 for 4102 California; management fees were not removed for owner G on 3720 Michigan on four instances; management fees were not removed for owner G on 2153 Stansbury A and B on five instances.
- cc. In violation of regulation 20 CSR 2250-8.220(8), the related transaction was not indicated on each deposit ticket on the property management escrow account, Account 4921.
- dd. In violation of regulation 20 CSR 2250-8.220(8), the related transaction was not indicated on each check written, the corresponding check stub, or other record of disbursement on the property management escrow account, Account 4921, on two instances.

5. On April 23-26 and 30, 2018, the Commission conducted a re-audit of Licensees' real estate activity. The Commission's re-audit revealed the following violations:

- a. In violation of sections 339.100.2(3) and 339.790.2(1), RSMo, Licensee failed to remit funds that belonged to others in that a tenant paid an extra \$20.00 in cash to Licensee on June 23, 2017. Licensee's accountant did not follow up on the reason for the overpayment and the amount was not refunded back to the tenant or forwarded to the property manager.
- b. In violation of section 339.105.1, RSMo, there was a net shortage of \$20.32 in the property management escrow account, account ending 4921 at First Bank (Account 4921). The shortage was the result of an identified overage of \$20.00 in an overpayment of rent from a tenant and an identified shortage of \$50.00 as a result of excess management fees taken.
- c. In violation of section 339.105.1, RSMo, there was a temporary shortage of \$2,000 from June 19, 2017 to June 21, 2017 in the property management escrow account, Account 4921, due to commingling of funds in that the accountant transferred funds to the brokerage's operating account in error.
- d. In violation of section 339.105.1, RSMo, there was commingling in the property management escrow account, Account 4921, on numerous instances including: transferred funds to brokerage's maintenance account in error; numerous instances of unexplained electronic fund transfer (EFT) deposits to, and withdrawals from, the escrow account; and the broker deposited part of her commission from a third party lease into the escrow account. Licensee's accountant made numerous EFT deposits and withdrawals to the escrow account without supporting documentation, according to the accountant, to "balance the account back to zero." However, the accountant did not take into consideration the property owner's liabilities that should have been reflected in the account balance.
- e. In violation of section 339.105.1, RSMo, there were temporary overages in the property management escrow account, Account 4921, on three instances: \$75.00 from July 1, 2017 to August 3, 2017 due to management fees not removed monthly; \$350.00 from December 7, 2017 to December 12, 2017 due to commingling in that the broker deposited part of her commission from a third party lease into the escrow account; and \$75.00 from January 1, 2017 to May 16, 2017 due to management fees not removed monthly.

- f. In violation of section 339.730.1(1), RSMo, the broker failed to perform the terms of the written agreement with the landlord in that incorrect management fees were taken.
- g. In violation of sections 339.750.1 and 339.780.4, RSMo, Licensee, the designated broker, acted as a dual agent without written authorization from the buyer on four instances.
- h. In violation of section 339.780.2, RSMo, and regulation 20 CSR 2250-8.200(1), Licensee managed property without an agreement with Case Properties at 3016 California.
- i. In violation of section 339.780.3, RSMo, Licensee acted as an agent of the buyer without obtaining a written agency agreement on four instances.
- j. In violation of regulation 20 CSR 2250-8.090(4)(A)14, all the terms and conditions under which the property could be sold were not contained in the listing agreement, in particular the motivating factors.
- k. In violation of regulation 20 CSR 2250-8.096(1)(A)6, the written brokerage relationship disclosure was not dated by Licensee on two instances.
- l. In violation of regulation 20 CSR 2250-8.100(1), all the terms and conditions were not specified in the offer to purchase on two occasions – possession and seller's disclosure statement on one occasion and the seller's disclosure statement on one occasion.
- m. In violation of regulation 20 CSR 2250-8.100(1), Licensee did not collect earnest money as specified in the contract.
- n. In violation of regulation 20 CSR 2250-8.150(2), Licensee failed to verify the accuracy of the closing statement on three occasions in that on one occasion, Licensee failed to identify the payees; on one occasion, Licensee failed to identify accurate figures; and on one occasion, Licensee did not identify the payees and it was not signed by the buyer.
- o. In violation of regulations 20 CSR 2250-8.150(3) and 8.160(1), Licensee failed to retain a copy of the buyer's closing statement.
- p. In violation of regulation 20 CSR 2250-8.160(1), Licensee failed to retain records on two instances – the financing agreement on one instance and the invoice on another instance.

- q. In violation of regulation 20 CSR 2250-8.220(1), on numerous instances, Licensee disbursed funds from the property management escrow account when the owner's account balance was not sufficient to cover the disbursement.
 - r. In violation of regulation 20 CSR 2250-8.220(6), on three instances, Licensee did not remove management fees monthly.
 - s. In violation of regulation 20 CSR 2250-8.220(8), on numerous instances, the record of bank transfers on the property management escrow account did not contain the related transaction.
6. Section 339.105, RSMo, states, in relevant part:
- 1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account.
 - 2. Each broker shall notify the commission of his or her intent not to maintain an escrow account, or the name of the financial institution in which each escrow or trust account is maintained, the name and number of each such account, and shall file written authorization directed to each financial institution to allow the commission or its authorized representative to examine each such account; such notification and authorization shall be submitted on forms provided therefore by the commission. A broker shall notify the commission within ten business days of any change of his or her intent to maintain an escrow account, the financial institution, account numbers, or change in account status.
 - 3. In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any time. The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during regular business hours at the broker's usual place of business.
7. Section 339.730.1(1), RSMo, states, in relevant part:
- 1. A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations:
 - (1) To perform the terms of the written agreement made with the client[.]
8. Section 339.750.1, RSMo, states, in relevant part:

A licensee may act as a dual agent only with the consent of all parties to the transaction. Consent shall be presumed by a written agreement pursuant to section 339.780.

9. Section 339.760, RSMo, states, in relevant part:

Every designated broker who has affiliated licensees shall adopt a written policy which identifies and describes the relationships in which the designated broker and affiliated licensees may engage with any seller, landlord, buyer, or tenant as part of any real estate brokerage activities.

10. Section 339.770.1, RSMo, states in relevant part:

In a residential real estate transaction, at the earliest practicable opportunity during or following the first substantial contract by the designated broker or the affiliated licensees with a seller, landlord, buyer, or tenant who has not entered into a written agreement for services as described in subdivision (5) of section 339.710, the licensee shall provide that person with a written copy of the current broker disclosure form which has been prescribed by the commission.

11. Section 339.780, RSMo, states, in relevant part:

...

2. Before engaging in any of the activities enumerated in section 339.010, a designated broker intending to establish a limited agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 339.730 and the terms of compensation and shall specify whether an offer of subagency may be made to any other designated broker.

3. Before or while engaging in any acts enumerated in section 339.010, except ministerial acts defined in section 339.710, a designated broker acting as a single agent for a buyer or tenant shall enter into a written agency agreement with the buyer or tenant. The agreement shall include a licensee's duties and responsibilities specified in section 339.740 and the terms of compensation.

4. Before engaging in any of the activities enumerated in section 339.010, a designated broker intending to act as a dual agent shall enter into a written agreement with the seller and buyer or landlord and tenant permitting the designated broker to serve as a dual agent. The agreement shall include a licensee's duties and responsibilities specified in section 339.750 and the terms of compensation.

12. Section 339.790.2(1) states, in relevant part:

2. A real estate broker and an affiliated licensee owe no further duty or obligation after termination, expiration, completion or performance of the brokerage agreement, except the duties of:

- (1) Accounting in a timely manner for all money and property related to, and received during the relationship[.]

13. Regulation 20 CSR 2250-4.030(1) states, in relevant part:

Any broker doing business under any name other than the broker's legal name or entity doing business under any name other than the name registered with the secretary of state, shall first comply with the provisions of sections 417.200 – 417.230, RSMo on the registration of fictitious names and shall furnish the commission a copy of the registration within ten (10) days of receipt of the official registration from the secretary of state.

14. Regulation 20 CSR 2250-8.010(2) states, in relevant part:

A broker's business sign of sufficient size to identify it and bearing the name under which the broker or the broker's firm is licensed, or the regular business name, shall be displayed outside of the broker's regular place of business.

15. Regulation 20 CSR 2250-8.090 states, in relevant part:

...

(4) Seller's/Lessor's Agency (Sale/Lease Listing) Agreement.

- (A) Every written listing agreement or other written agreement for brokerage services shall contain all of the following:

1. The price;

...

3. A definite beginning date;
4. An expiration date;

...

8. A statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a transaction broker and if permitted, the duties and responsibilities of a transaction broker;

...

14. All other terms and conditions under which the property is to be sold, leased, or exchanged.

16. Regulation 20 CSR 2250-8.096 states, in relevant part:

- (1) Licensees acting with or without a written agreement for brokerage services pursuant to sections 339.710 to 339.860, RSMo, are required to have such relationships confirmed in writing by each party to the real estate transaction on or before such party's first

signature to the real estate contract. Nothing contained herein prohibits the written confirmation of brokerage relationships from being included or incorporated into the real estate contract, provided that any addendum or incorporated document containing the written confirmation must include a separate signature section for acknowledging the written confirmation that shall be signed and dated by each party to the real estate transaction.

(A) Written confirmation must –

...

5. Be signed and dated by the seller/landlord and buyer/tenant. If the landlord has entered into a written property management agreement pursuant to 20 CSR 2250-8.200 – 20 CSR 2250-8.210, the landlord shall not be required to sign the written confirmation;

6. Be signed and dated by the disclosing licensees on or before the contract date. If a landlord's agent or transaction broker is conducting property management pursuant to 20 CSR 2250-8.200 – 20 CSR 2250-8.210, the unlicensed office personnel may, in the performance of the duties enumerated in 339.010.5(5)(a)-(e), sign the written confirmation on behalf of the landlord's agent or transaction broker.

17. Regulation 20 CSR 2250-8.097(1) states, in relevant part:

In a residential real estate transaction, at the earliest practicable opportunity during or following the first substantial contact by the designated broker or the affiliated licensees with a seller, landlord, buyer, or tenant who has not entered into a brokerage relationship as described in section 339.710.5, RSMo, the licensee shall provide that person with a written copy of the current Broker Disclosure Form prescribed by the Missouri Real Estate Commission. In any event, a licensee shall provide the party that has not entered into a brokerage relationship as described in section 339.710.5, RSMo, the Broker Disclosure Form upon obtaining any personal or financial information or before the signing of a brokerage service agreement, whichever occurs first. If a landlord's agent or transaction broker is conducting property management pursuant to 20 CSR 2250-8.200, the unlicensed office personnel may, in their performance of the duties enumerated in section 339.710.5(5)(a)-(e), provide a tenant with a written copy of the current Broker Disclosure Form prescribed by the commission on behalf of the landlord's agent or transaction broker.

18. Regulation 20 CSR 2250-8.100(1) states, in relevant part:

Every licensee shall make certain that all of the terms and conditions authorized by the principal in a transaction are specified and included in an offer to sell or buy and shall not offer the property on any other terms. Every written offer shall contain the legal description or property address, or both, and city where the property is located, or in the absence of, a clear description unmistakably identifying the property.

19. Regulation 20 CSR 2250-8.150 states, in relevant part:
- (2) A broker may arrange for a closing to be administered by a title company, an escrow company, a lending institution or an attorney, in which case the broker shall not be required to sign the closing statement; however, it shall remain each broker's responsibility to require closing statements to be prepared, to review the closing statements to verify their accuracy and to deliver the closing statements to the buyer and the seller or cause them to be delivered. The detailed closing statement shall contain all material financial aspects of the transaction, including the true sale price, the earnest money received, any mortgages or deeds of trust of record, all monies received by the broker, closing agent or company in the transaction, the amount, and payee(s) of all disbursements made by the broker, closing agency or company and the signatures of the buyer and seller.
 - (3) The brokers for the buyer and the seller shall retain legible copies of both buyer's and seller's signed closing statements.
20. Regulation 20 CSR 2250-8.160 states, in relevant part:
- (1) Every broker shall retain for a period of at least three (3) years true copies of all business books; accounts, including voided checks; records; contracts; brokerage relationship agreements; closing statements and correspondence relating to each real estate transaction that the broker has handled. The records shall be made available for inspection by the commission and its authorized agents at all times during usual business hours at the broker's regular place of business. No broker shall charge a separate fee relating to retention of records.
 - (2) Every broker shall retain for a period of at least three (3) years true copies of all property management agreements, correspondence or other written authorization relating to each real estate transaction relating to leases, rentals or management activities the broker has handled. The broker must also retain all business books, accounts and records unless these records are released to the owner(s) or transferred to another broker by written detailed receipt or transmittal letter agreed to in writing by all parties to the transaction.
21. Regulation 20 CSR 2250-8.200(1) states, in relevant part:
- When managing a property a licensee shall not rent or lease, offer to rent or lease, negotiate, or offer or agree to negotiate the rent or lease, list or offer to list for lease or rent, assist or direct in procuring of prospects calculated to result in the lease or rent, assist or direct in the negotiation of any transaction calculated or intended to result in the lease or rent, or show that property to prospective renters or lessees unless the licensee's broker holds a current written property management agreement or other written authorization signed by the owner of the real estate or the owner's authorized agent.
22. Regulation 20 CSR 2250-8.220 states, in relevant part:

(1) A broker shall establish and maintain a separate escrow account(s), to be designated as a property management escrow account(s), for the deposit of current rents and money received from the owner(s) or on the owner's(s') behalf for payment of expenses related to property management. Before making disbursements from a property management escrow account, a broker shall ensure that the account balance for that owner's(s') property(ies) is sufficient to cover the disbursements.

...

(6) Fees or commissions payable to a broker must be withdrawn from a property management escrow account at least once a month unless otherwise agreed in writing. Any rent paid in advance as a deposit for the last month's rent or as rent other than the current month's rent held by a broker shall be deposited in the property management escrow account unless otherwise agreed to in writing.

(7) In addition to the notification required by section 339.105.2, RSMo, each broker, upon the request of the commission or its agent, shall consent to the examination and audit of the broker's property management escrow account(s) by the commission or its agent. As part of the consent, each broker shall execute a form presented to him/her by the commission or its agent entitled Consent to Examine and Audit Escrow or Trust Account.

(8) Each check written on an escrow account, or each corresponding check stub, or other record of disbursement of funds from the account and each deposit ticket shall indicate the related transaction. Each check written on an escrow account for licensee fees or commission shall be made payable to the licensee who is owed the fee or commission or to the firm's general operating account.

23. Licensees' conduct, as described in paragraphs 4 through 5 above, constitutes cause to discipline Licensees' licenses.

24. Cause exists for the Commission to take disciplinary action against Licensees' licenses under § 339.100.2(3), (15), (16) and (19), RSMo, which states in pertinent part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo, against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

...

(3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other property coming into his or her possession which belongs to others;

...

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860*, or any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860*;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

...

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

Joint Agreed Disciplinary Order

25. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Commission in this matter under the authority of §§ 536.060, 621.045.4 and 621.110, RSMo.

26. The terms of discipline shall include **Licensees' licenses shall be placed on probation for a period of three (3) years.** Licensees' licenses are hereby placed on three (3) years' probation. During the period of **probation** on their licenses, Licensees shall be entitled to practice as a real estate association and real estate broker associate provided they adhere to all the terms stated herein. The period of probation shall constitute the "disciplinary period."

27. **Terms and conditions of the disciplinary period.** Terms and conditions of the disciplinary period are as follows:

Specific Terms:

- a. Within the first year of the disciplinary period, Licensees shall provide the Commission written documentation of the correction of all shortages and overages.
- b. During the period of probation, Licensee Nelson shall be prohibited from managing property for a third party through Case Properties or any other entity.

General Terms:

- a. Licensees shall keep the MREC apprised at all times in writing of their current addresses and telephone numbers at each place of residence and business. Licensees shall notify the MREC in writing within ten days of any change in this information.
- b. Licensees shall timely renew Licensees' licenses, timely pay all fees required for license renewal, and comply with all other requirements necessary to maintain their licenses in a current and active state. Licensees shall not apply for any additional real estate licenses, transfer to another broker, or change the status of the current licenses without the prior written permission of the Commission. During the disciplinary period, Licensees shall not place their licenses on inactive status as would otherwise be allowed under 20 CSR 2250-4.050. Alternatively, without violating the terms and conditions of this Settlement Agreement, Licensees may surrender their real estate licenses by submitting a Surrender of Licensure Rights form to the MREC along with the original license and any duplicate copies issued to Licensees. If Licensees apply for a real estate license after surrender, Licensees shall be required to requalify as if original applicants. Licensees would have to apply as an original applicant for a salesperson license. The MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.
- c. Licensees shall meet in person with the MREC or its representative at any such time and place as required by the MREC or its designee upon notification from the MREC or its designee. Said meetings will be at the MREC's discretion and may occur periodically during the probation period.
- d. Licensees shall immediately submit documents showing compliance with the requirements of this Order to the MREC when requested by the MREC or its designee.
- e. During the probationary period, Licensees shall accept and comply with unannounced visits from the MREC's representatives to monitor compliance with the terms and conditions of this Order.
- f. Licensees shall comply with all relevant provisions of Chapter 339, RSMo, as amended; all rules and regulations of the MREC; and all local, state, and federal laws. "State" as used herein refers to the State of Missouri and all other states and territories of the United States.

g. Licensees shall report to the MREC each occurrence of Licensees' being finally adjudicated and found guilty, or entering a plea of guilty or nolo contendere, in a state or federal criminal prosecution, to felony or misdemeanor offenses, within ten business days of each such occurrence.

28. This Agreement does not bind the Commission or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Agreement that are either now known to the Commission or may be discovered.

29. This Agreement does not bind the Commission or restrict the remedies available to it concerning any future violations by Licensee of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms of this Agreement.

30. All parties agree to pay all their own fees and expenses incurred as a result of this case, its settlement or any litigation.

31. The parties to this Agreement understand that the Missouri Real Estate Commission will maintain this Agreement as an open record of the Commission as provided in Chapters 339, 610 and 324, RSMo.


32. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.


33. Licensees, together with Licensees' heirs and assigns, and Licensees' attorneys, do hereby waive, release, acquit and forever discharge the Commission, its respective members and any of its employees, agents, or attorneys, including any former Commission members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

34. If no contested case has been filed against Licensees, Licensees have the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the licenses of Licensees. If Licensees desire the Administrative Hearing Commission to review this Agreement, Licensees may submit this request to: **Administrative Hearing Commission, P.O. Box 1557, United States Post Office Building, 131 West High St., Jefferson City, MO 65102.**

35. If Licensees have requested review, Licensees and Commission jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensees' licenses and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensees' licenses. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensees' licenses, the agreed upon discipline set forth herein shall go into effect. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the Commission may proceed to seek discipline against Licensees as allowed by law. If the Licensees do not submit the agreement to the Administrative Hearing Commission for determination, the agreement shall become effective fifteen (15) days following the signature of the Commission's Executive Director.

LICENSEES


Case Properties LLC
Kelly J. Nelson, Designated Broker


Kelly J. Nelson

Date 1/9/19

COMMISSION


Terry W. Moore
Executive Director
Missouri Real Estate Commission

Date 01-18-2019